

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXX's.

September 4, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 13, 2002

Case Number: VSO-0544

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to obtain an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ^{1/} A DOE Operations Office suspended the processing of the Individual's access authorization application pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, it is my decision that the Individual's access authorization not be granted.

I. Background

The Individual is employed by a subcontractor who sought to have the Individual obtain a security clearance in order to work at a DOE facility. During the course of a background investigation, derogatory information was discovered concerning his use of alcohol and illegal drugs. The Individual then participated in a Personnel Security Interview (PSI) conducted by the local security office concerning his alcohol and illegal drug usage. Later, the Individual was examined by a DOE consultant psychiatrist (DOE Psychiatrist) and in an October 2001 report, the DOE Psychiatrist opined that the Individual had demonstrated a history of alcohol and illegal substance abuse and had used alcohol habitually to excess in the past. Because the Individual had consumed alcohol as recently as a month prior to the examination he could not conclude that the Individual had demonstrated sufficient reformation from his prior alcohol misuse. However, he also concluded that the Individual had demonstrated sufficient reformation from illegal drug use and that he did not suffer from a psychological condition that would affect his judgment or reliability.

^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

Because the derogatory information concerning the Individual had not been resolved, the local DOE Office obtained authority to initiate this administrative review proceeding. The local DOE Office then issued a Notification Letter to the Individual, citing the DOE Psychiatrist's finding regarding the Individual's history of excessive alcohol consumption as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J). 2/ In addition, the local DOE Office cited the Individual's history of using illegal drugs as derogatory information falling within the ambit of 10 C.F.R. § 710.8(k) (Criterion K). 3/ The Notification Letter also cited the Individual's failure to provide truthful information regarding a question in his Questionnaire for National Security Positions (QSP) as derogatory information under 10 C.F.R. § 710.8(f) (Criterion F). 4/ Lastly, among other items, the Individual's failure to provide an accurate answer to one question in the QSP and the fact that the Individual had been arrested in February 2001 for Possession of Marijuana, Possession of Paraphernalia and Possession of a Controlled Substance, Cocaine, were cited as derogatory information under 10 C.F.R. § 710.8(l). 5/

Upon receipt of the Notification Letter, the Individual filed a response to the Notification Letter and requested a hearing. The DOE transmitted the Individual's hearing request to the Office of Hearings and Appeals (OHA) Director, and the OHA Director appointed me as the Hearing Officer in this case. 10 C.F.R. § 710.25(a), (b). I convened a hearing in this matter within the time frame prescribed by the DOE regulations. 10 C.F.R. § 710.25(g).

-
- 2/ Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).
- 3/ Criterion K refers to information which shows that an individual "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 . . . except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k).
- 4/ Criterion F refers to information which indicates that an individual "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire." 10 C.F.R. § 710.8(f).
- 5/ Criterion L refers to information indicating that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

At the hearing, the Individual represented himself and testified on his own behalf. The local DOE office presented one witness, the DOE Psychiatrist. The local DOE Office entered 12 exhibits into the record (Exhibits 1-12); the Individual tendered one Exhibit (Ind. Exhibit 1). On August 5, 2002, I closed the record in this case when I received the hearing transcript (hereinafter referred to as "Tr.").

II. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After consideration of all the relevant information in the record, I conclude for the reasons set forth in this Opinion that the local DOE Office properly invoked Criteria J, F, K and L. I also find that the security concerns raised by the Criterion J, F, K and L derogatory information have not been mitigated. Consequently, it is my opinion that the Individual's access authorization should not be granted.

III. Findings of Fact and Analysis

A. Criterion F

Question No. 24(a) of the Individual's completed September 1999 QSP asks:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substances, for example, marijuana, cocaine, crack cocaine, hashish, narcotics, (opium, morphine, codeine, heroin, etc.), amphetamines, depressants, (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?

DOE Exhibit 6 at 2. The Individual checked the box indicating "Yes." In a box provided below Question No. 24(a) for the Individual to list "the date(s), identify the controlled substance(s) and/or prescription drugs used, and the number of times each was used," the Individual indicated that during June 1980 to June

1982 he had used Marijuana an estimated 50 times. DOE Exhibit 6 at 2. Later, in response to a Letter of Interrogatory sent to him in May 2001 he listed the following drug usage and the dates of usage:

| | |
|--------------------|--------------|
| Marijuana - | 1977 to 2001 |
| Hashish - | 1977 to 1985 |
| Cocaine - | 1998 to 2001 |
| Speed <u>6</u> / - | 1980 to 2000 |
| Opium - | 1977 to 1985 |

DOE Exhibit 7 at 3.

It not disputed that the Individual provided false information in response to Question No. 24 in the QSP. The answer the Individual provided to Question No. 24(a) omitted the fact that the Individual had used a number of illegal drugs other than marijuana. At the hearing, the Individual admitted that he provided a false answer to this question. Tr. at 15. The Individual testified that he had been less than truthful because of the shame and embarrassment disclosure would bring to himself and his family. He also feared “legal ramifications” if he fully disclosed his past illegal drug use. Tr. at 16. However, the Individual is no longer ashamed of his past history with illegal drugs and points out that he was honest when he was questioned in a PSI in August 2001. Tr. at 24. He realizes that he had made a mistake and that he should have been “forthcoming and honest” at the time he completed the QSP. Tr. at 24.

The basis for the DOE security concerns is obvious. False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Review (Case No. VSO-0442)*, 28 DOE ¶ 82,815 (2001) (*VSO-0442*).

Cases involving verified falsifications are difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the falsification and the Individual’s subsequent history in order to assess whether the individual has rehabilitated himself from the falsehood and whether granting or restoring the security clearance would pose a threat to national security. *See VSO-0442*. In the present case, the Individual’s falsification, while apparently isolated, sought to hide an extensive history of illegal drug use. The Individual did provide accurate information approximately eight months after his QSP. Nevertheless, the Individual’s falsification is relatively recent. Furthermore, the

6/ Speed refers to amphetamines.

Individual's testimony at the hearing revealed yet another instance where he failed to provide an accurate answer regarding his activities concerning illegal drugs.

In his PSI, the Individual was asked the following questions:

Q: So you never did buy any [marijuana] for resale?

A: No.

Q: OK. Just to recoup your own investment, not for profit, but just to cover your own expense. Did you ever . . .

A: Personal, personal use. I didn't mean . . .

Q: Have you . . .

A: . . . to cut you off there, I'm sorry.

Q: Have you ever sold marijuana?

A: No, I have not.

DOE Exhibit 8 at 28. However, at the hearing the Individual testified as follows:

Q: Have you ever sold drugs or anything like that?

A: Yes.

Q: When was that?

A: In my earlier years.

. . . .

Q: . . . [y]ou can't give me any -- estimate when is the last time you sold illegal drugs?

A: I would --

Q: Was it in your –

A: I don't know, sir. I could not. I mean, I have sold not, per se, as a drug dealer. You know, I would sell some to my friends occasionally, marijuana. You know if they come over to your house –

Tr. at 19, 29.

At the hearing the Individual admitted that his answer in the PSI concerning whether he had ever sold marijuana was inaccurate. Tr. at 48. While the Individual does not know why he provided this answer, he speculates that he did not answer in the affirmative since his sales were not made to try to produce an income. Tr. at 48-49. Nevertheless, I believe that the question asked of the Individual in the PSI was unambiguous "Have you ever sold marijuana?" and that the Individual provided a false answer to this question.

Given the relatively recent nature of the falsification in the QSP, the extent of the information he sought to hide with the falsification, and the newly discovered failure to provide an accurate answer concerning his sale of marijuana, I cannot find that the concerns raised by the Individual's failure to provide a truthful answer in his QSP has been mitigated. The integrity of the security clearance authorization process depends upon DOE being able to rely on applicants for and holders of security clearances to provide truthful answers at all times especially when the matters raised are personally sensitive. In this case honesty is vital since the issues raised concerned illegal drug use. While I have no reason to disbelieve the Individual's assertion that he only sold marijuana on isolated occasions and only to friends and not for profit, the fact that he did not disclose these facts when asked in the PSI creates additional doubt regarding his reliability and veracity concerning matters regarding illegal drug use. In sum, the security concerns raised by the Criterion F information have not been mitigated.

B. Criteria J

The Individual began to consume alcohol in his early teen years. DOE Exhibit 8 at 8. At this time of his life he would consume "6 to 12 beers" approximately, twice a month. DOE Exhibit 8 at 8-9. In September 1981, the Individual was arrested for Driving Under the Influence of Alcohol (DUI). DOE Exhibit 6 at 1; see DOE Exhibit 8 at 8. After this arrest he would get intoxicated approximately 5 to 10 times a year. DOE Exhibit 8 at 11. During the period from February to May 2001, the Individual was consuming 6 to 12 beers or a pint of vodka approximately three times a week and becoming intoxicated twice a week. DOE Exhibit 8 at 13-15. The Individual was also experiencing problems with the use of cocaine. DOE Exhibit 8 at 32. After becoming very intoxicated and having used cocaine during a weekend in early July 2001, the

Individual admitted himself into a 28-day rehabilitation facility to receive treatment for his cocaine problem. 7/ DOE Exhibit 8 at 15-17.

During the processing of the request for access authorization for the Individual, the Individual was examined by the DOE Psychiatrist in October 2001. In his report the DOE Psychiatrist diagnosed the Individual as suffering from Polysubstance Abuse and opined:

[The Individual] presents with a history of alcohol abuse as well as abuse of other illegal substances He has voluntarily gone through both inpatient and outpatient alcohol and drug treatment and continues to follow through with this on a regular basis. According to his reported history, [the Individual] has in fact used alcohol habitually to excess however [he] has not been alcohol dependent. There is adequate evidence of rehabilitation and reformation as evidenced by his continued abstinence from drugs however he does admit that he had used alcohol on one occasion a month ago. This would indicate a lack of suitable reformation from alcohol. Continued and complete abstinence for at least six months would be necessary to show ongoing reformation.

DOE Exhibit 9 at 3.

At the hearing the Individual testified that he does not believe that he has an alcohol problem “per se.” Tr. at 26. He admits to have gone “binge drinking” on occasions but asserts that he has not craved alcohol as he once did illegal drugs. Tr. at 27. The Individual testified that since he was examined by the DOE Psychiatrist in October 2001 he has consumed alcohol approximately 10 to 15 times and on each occasion, he usually consumes two or three beers and on a couple of these occasion has consumed enough to be intoxicated. Tr. at 22. The Individual defines intoxication as having a “happy feeling.” Tr. at 23.

The DOE Psychiatrist testified that he diagnosed the Individual as suffering from “Polysubstance Abuse.” Tr. at 34. However, the DOE Psychiatrist also testified that the Individual’s alcohol use was not a factor in that diagnosis. Tr. at 34. 8/ Further, after hearing the Individual’s testimony concerning his present use he would decline to diagnose the Individual as suffering from Alcohol Abuse. Tr. at 36. The DOE Psychiatrist went on to say, however, that he could not find that the Individual had “reformed” regarding his previous alcohol misuse since to him reformation indicates abstinence. Tr. at 37.

7/ The treatment facility diagnosed the Individual as suffering from cocaine dependence. DOE Exhibit 11 at 1, 3.

8/ The DOE Psychiatrist testified that the Individual’s use of marijuana, cocaine and amphetamines were the substances on which he based his diagnosis of Polysubstance Abuse. Tr. at 34.

There is no evidence in the record that establishes that the Individual has been diagnosed “by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” See 10 C.F.R. § 710.8(j). However, the DOE Psychiatrist has stated in his Report that he believes the Individual has been a user of alcohol habitually to excess. This is supported by the Individual’s self-reported history of alcohol consumption and intoxication contained in the PSI and his testimony that since October 2001 he has been intoxicated at least two times. Consequently, the local DOE office properly invoked Criterion J.

Given the evidence before me, I cannot find that the Individual has mitigated the security concerns raised by his past episodes of consuming alcohol to the point of intoxication. While the Individual believes that he does not have an alcohol problem and the DOE Psychiatrist does not find he currently suffers from Alcohol Abuse, the Individual has a recent history of a number of bouts of intoxication. Excessive use of alcohol raises a security concern due to the heightened risk that an individual’s judgment and reliability will be impaired to the point that he will fail to safeguard classified matter or special nuclear material. See *Personnel Security Review (Case No. VS0-0476)*, 28 DOE ¶ _____, (December 5, 2001). Despite the recommendation of his treatment facility that he refrain from using alcohol, the Individual has chosen not to do so. Tr. at 26. In addition, the DOE Psychiatrist states that he cannot conclude that the Individual had reformed his prior misuse of alcohol. Given the record before me there is not sufficient evidence for me to conclude that the security concerns raised by the Individual’s alcohol consumption and past instances of intoxication have been mitigated.

C. Criterion K

As discussed above, the Individual has admitted to an extensive history of using cocaine, hashish, “speed,” opium and marijuana in varying frequency and at varying times during the period 1977 to 2001. DOE Exhibit 7 at 3. The Individual was arrested in February 2001 for Possession of Marijuana, Possession of Paraphernalia and Possession of a Controlled Substance, Cocaine. DOE Exhibit 8 at 19. Subsequently, a Grand Jury issued a “No True Bill” and declined to issue an Indictment for these charges. DOE Exhibit 8 at 20. After his February 2001 arrest, the Individual sought outpatient treatment for his cocaine usage. DOE Exhibit 8 at 34. After binging on cocaine and alcohol during a weekend in July 2001, the Individual decided to get inpatient treatment for his cocaine use at a local treatment facility. DOE Exhibit 8 at 24, 35. The Individual was diagnosed at the facility as suffering from cocaine dependence and subsequently completed a 28-day inpatient program. DOE Exhibit 11. The Individual currently attends Narcotics Anonymous meetings approximately twice a month. Tr. at 18. The Individual testified that he has not used illegal drugs since July 2001 and has submitted monthly random urine test results that indicate the absence of illegal drugs. Tr. at 18; Individual’s Exhibit 1. The Individual has not challenged the record concerning his prior illegal drug use.

The use of illegal drugs raises legitimate security concerns. It has been noted on many occasions that illegal drug use raises a security concern for the DOE since it reflects a deliberate disregard for state and federal laws prohibiting such use. "The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is the further concern of the DOE that the drug abuser might also pick and choose which DOE security regulations he will obey and not obey with respect to protection of classified information." *Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,512 (1995). In addition, a person who uses illegal drugs may open himself to blackmail or other forms of coercion, because he may want to conceal his use. *Personnel Security Hearing*, Case No. VSO-0503, 27 DOE ¶ _____ (July 2, 2002).

In an attempt to demonstrate mitigation, the Individual points out that he has remained abstinent from illegal drugs since July 2001. Tr. at 18. In support of his claim the Individual has submitted random urine drug test reports indicating negative results for the presence of illegal drugs. Individual Exhibit 1. He also has affirmed that he no longer hides his prior illegal drug use. DOE Exhibit 3 (April 11, 2002 response at 2); Tr. at 24, 45. In his report, the DOE Psychiatrist opined that the Individual has demonstrated adequate rehabilitation from his illegal drug use. See DOE Exhibit 9 at 3. The record contains sufficient evidence to permit me to conclude he has been rehabilitated from his problem with illegal drug usage. However, the Individual's commendable rehabilitation from his cocaine problem in this case does not fully resolve the concerns raised by the Individual's lengthy history of illegal drug use. When asked at the hearing about his arrest in 2001 for Possession of Marijuana, Possession of Paraphernalia and Possession of a Controlled Substance, Cocaine, the Individual declined to answer based upon advice of his attorney. Tr. at 28. Without additional information concerning this arrest, there still remains some doubt concerning the extent of the Individual's past involvement with illegal drugs. See 10 C.F.R. § 710.6(a) (an individual may elect not to cooperate in providing frank answers to pertinent questions posed by the Department in connection with the determination of an individual's eligibility for access authorization; however such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization). Further, the Individual has had a lengthy involvement with illegal drugs and thus an extensive history of deliberate, illegal conduct. While I believe that the Individual has taken encouraging steps to free himself from his cocaine problem, I do not believe that the Criterion K security concerns raised by the Individual's involvement with illegal drugs have been mitigated.

D. Criterion L

The Notification Letter identifies several items of derogatory information the local security office believes indicate that the Individual is not honest, reliable or trustworthy. The most significant items are the Individual's failure to provide an accurate answer to a question concerning prior illegal drug usage in his QSP and his two arrests, once in 1981 for DUI and once in February 2001 for possession of marijuana, cocaine and drug paraphernalia. The Notification Letter also cites as Criterion L derogatory information

the Individual's subsequent use of alcohol after stating in the August 2001 PSI that he intended to refrain from use of alcohol and illegal drugs. *See* DOE Exhibit 2 at 7; DOE Exhibit 8 at 23.

As discussed earlier, I believe that the security concerns raised by the Individual's failure to provide a candid answer in the QSP concerning his prior illegal drug use have not been mitigated. Additionally, the lack of information available concerning the February 2001 arrest prevents me from finding that the concern about the Individual's reliability raised by this arrest has been resolved. Consequently, I cannot find that the Criterion L concerns raised by these instances of conduct have been mitigated.

IV. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the Individual's eligibility for a security clearance, and I do not find sufficient evidence in the record that resolves this doubt. I cannot conclude that granting the Individual an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual should not be granted an access authorization. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: September 4, 2002

